



ASSOCIATION OF AMERICAN RAILROADS

Law Department
Louis P. Warchot
Senior Vice President-Law
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November 17, 2011

Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E St., S.W.
Washington, DC 20423

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U.S. DEPARTMENT OF
TRANSPORTATION
WASHINGTON, D.C.

Re: STB Docket No. EP 712, Improving Regulation and Regulatory Review

Dear Ms. Brown:

In response to the Surface Transportation Board's ("Board") Notice of Request for Comments served October 12, 2011, attached please find the Petition for Clarification ("Petition") of the Association of American Railroads ("AAR") for filing in the above proceeding. In its Petition, the AAR requests the Board to clarify that this proceeding will not address regulations that have been the subject of other recent *Ex Parte* proceedings.

Respectfully submitted,

Louis P. Warchot
Counsel for the Association of
American Railroads

Attachment

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. EP 712

IMPROVING REGULATION AND REGULATORY REVIEW

PETITION FOR CLARIFICATION OF THE
ASSOCIATION OF AMERICAN RAILROADS

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. EP 712

IMPROVING REGULATION AND REGULATORY REVIEW

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By this Petition, the Association of American Railroads ("AAR"), on behalf of its member railroads, seeks clarification from the Surface Transportation Board ("Board") as to the scope of the proceeding instituted in the Notice of Request for Comments served October 12, 2011 ("Notice"). Specifically, the AAR asks the Board to clarify that this proceeding will not address regulations that have been the subject of other recent *Ex Parte* proceedings.

Discussion

In its Notice, the Board stated that, in accordance with Executive Order 13563, "Improving Regulation and Regulatory Review [issued Jan. 18, 2011]," and Executive Order 13579, "Regulation and Independent Regulatory Agencies [issued July 11, 2011]"¹, it is "undertaking review of its existing regulations to evaluate their continued validity and determine whether they are crafted effectively to solve current problems facing shippers and railroads." Notice at 1. To facilitate that process, the Board requested public comments "on whether any of

¹ Executive Order 13563 applied to executive agencies other than independent regulatory agencies. In Executive Order 13579, President Obama requested that independent regulatory agencies comply with executive Order 13563, to the extent permissible by law.

its regulations may be outmoded, ineffective, insufficient, or excessively burdensome, and how to modify, streamline, expand, or repeal them, as appropriate.”²

The Board also stated that it had recently instituted reviews of significant areas of regulation on a voluntary basis, and it listed several proceedings in which it recently received and/or solicited comments from interested parties. *See id.*³

However, the Board did not expressly say it was not seeking comments on the regulations at issue in those proceedings. The AAR believes the Board does not intend to use this proceeding to revisit matters it has recently addressed or that plainly remain on its agenda.⁴

Specifically, the AAR respectfully requests that the Board clarify that it does not intend—and therefore it does not intend for parties—to address in this proceeding the regulations at issue in the following dockets:

1. EP 385 (Sub-No. 7), *Waybill Data Reporting for Toxic Inhalation Hazards*
2. EP 646 (Sub-No. 3), *Waybill Data Released in Three-Benchmark Rail Rate Proceedings*
3. EP 681, *Class I Railroad Accounting and Financial Reporting—Transportation of Hazardous Materials*
4. EP 684, *Solid Waste Rail Transfer Facilities*

² The Board requested those filing comments to: “[1] specifically identify which of the Board’s existing regulations or reporting requirements are outmoded, ineffective, insufficient, or excessively burdensome, and explain why; [2] propose which regulations should be modified, streamlined, expanded, or repealed; [3] provide evidentiary support to help the Board analyze the costs and benefits (both quantitative and qualitative) of any proposed changes; and [4] suggest an appropriate timeframe for conducting the next retrospective review of the agency’s regulations and reporting requirements.” *Id.*

³ The Board, in its May 18, 2011 letter, specifically referenced the following STB initiatives: Ex Parte No. 705, *Competition in the Railroad Industry*; EP 704, *Review of Commodity, Boxcar, and TOFC/COFC Exemptions*; EP 707, *Demurrage Liability*; EP 706, *Reporting Requirement for Positive Train Control Expenses and Investment*; EP 702, *National Trails System Act and Railroad Rights-of-Way*; EP 699, *Assessment of Mediation and Arbitration Procedures*; EP 684, *Solid Waste Rail Transfer Facilities*. *See id.*

⁴ *Cf.*, EP 711, *Petition for Rulemaking to Adopt Revised Competitive Switching Rules* (STB decision served Nov. 4, 2011) in which the Board, in the interests of conserving agency resources, deferred a decision granting or denying the National Industrial Transportation League’s (“NITL”) April 12, 2011 request to institute a rulemaking to revise the Board’s existing reciprocal switching rules “pending [its] review of the issues and arguments presented in EP 705” because it was currently “contin[ui]ng] to consider the extensive arguments presented in EP 705 regarding competitive access, including reciprocal switching.”

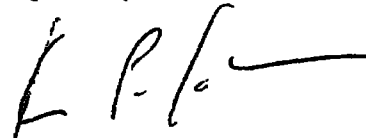
5. EP 697, *Amtrak Emergency Routing Orders*
6. EP 699, *Assessment of Mediation and Arbitration Procedures*
7. EP 702, *National Trails System Act and Railroad Rights-of-Way*
8. EP 704, *Review of Commodity, Boxcar, and TOFC/COFC Exemptions*
9. EP 705, *Competition in the Railroad Industry*
10. EP 706, *Reporting Requirement for Positive Train Control Expenses and Investments.*
11. EP 707, *Demurrage Liability*
12. EP 711, *Petition for Rulemaking to Adopt Revised Competitive Switching Rules*

The AAR urges the Board to clarify this point, so interested parties do not feel compelled to resubmit prior comments, which would result in a wasteful duplication of effort and could make the record in this proceeding too unwieldy to be helpful to the Board.

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